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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,521	04/30/2001	David Matheny	10559-380001	5533

20985 7590 08/25/2005

FISH & RICHARDSON, PC
12390 EL CAMINO REAL
SAN DIEGO, CA 92130-2081

EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT PAPER NUMBER

2145

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,521

Applicant(s)

MATHENY ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 16-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Independent claims 16 and 27 are directed to *an article, including instructions residing on a machine-readable medium, the instructions causing a machine to perform a function*. The specification is silent on *an article, including instructions residing on a machine-readable medium*. Since the specification is silent, the Office must give the broadest reasonable interpretation to the claims. An article, including instructions residing on a machine-readable medium, can be read as a piece of paper with instructions upon it. A piece of paper is a machine-readable medium. The instructions cause a machine to perform a function. A machine is not necessarily the machine that reads the machine-readable medium. This lack of embodiment implies that an article including instructions residing on a machine-readable medium is not limited to the tangible embodiment of a computer-readable medium.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1, 10-13, 16, and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrell et al. (U.S. Patent No. 6,751,663).

5. In regard to claims 1 and 16, Farrell discloses a method (and article, including instructions residing on a machine-readable medium) for *receiving discovery data collected from a network device by two or more discovery agents; aggregating said discovery data; coalescing the discovery data in a software file comprising a discovery document, said discovery data including two or more duplicate data entries; and removing all but one of the duplicate data entries from the discovery document*. See Farrell, Abstract; column 2, lines 35-50, column 3, lines 7-17 and 46-58; column 4, lines 15-31. By this rationale claims 1 and 16 are rejected.

6. In regard to claims 10 and 25, Farrell is applied as in claims 1 and 16. Farrell further discloses *receiving discovery data collected from two or more network device[s] by said two or more discover agents*. See Farrell, column 2, lines 25-39; column 3, lines 47-49. By this rationale claims 10 and 25 are rejected.

7. In regard to claims 11-12 and 26-27, Farrell is applied as in claims 1 and 16. Farrell further discloses *generat[ing] [assigning] a key for each discovered network device in the discovery document based on a precedence file containing instructions for generating keys; and appending said precedence file to said discovery document*. See Farrell, column 7, line 50 – column 9, line 41. See Farrell, Table 1. Farrell assigns identifiers and translates collected information into network accounting records, which is the same as assigning keys for devices and appending the keys to the document. By this rationale claims 11-12 and 26-27 are rejected.

8. In regard to claims 13 and 28, Farrell is applied as in claims 12 and 27. Farrell further discloses the use of *a plurality of discovery agents*. See Farrell, column 2, lines 25-39; column 3, lines 47-49. Farrell further discloses the use of *a plurality of aggregator agents*. See Farrell, column 18, line 40 – column 19, line 11. By this rationale claims 13 and 28 are rejected.

Claim Rejections - 35 USC § 103

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9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 2-4, 14, 17-19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell and Barrett et al. (U.S. Patent No. 6,633,909).

11. In regard to claims 2, 14, 17 and 29 Farrell is applied as in claims 1, 12, 16 and 28. Farrell fails to disclose the use of an agent directory. However, Barrett discloses an agent directory. See Barrett, Abstract; column 2, line 57 – column 3, line 9. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Farrell and Barrett because the network management station has to be made aware of the agent. See Barrett, column 1, lines 49-62. Farrell gives motivation for the combination by stating data collection systems [agents] are used to collect information from network traffic flow and deliver the data. See Farrell, column 1, lines 7-30. By this rationale claims 2, 14, 17 and 29 are rejected.

12. In regard to claims 3 and 18, Farrell and Barrett are applied as in claim 2. Farrell further discloses the use of *two or more discovery agents*. See Farrell, column 2, lines 25-39; column 3, lines 47-49. By this rationale claims 3 and 18 are rejected.

13. In regard to claims 4 and 19, Farrell is applied as in claims 2 and 17. Farrell further discloses the use of *two or more aggregator agents*. See Farrell, column 18, line 40 – column 19, line 11. By this rationale claims 4 and 19 are rejected.

14. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell, Barrett and Libert et al. (U.S. Patent No. 6,574,655).

15. In regard to claims 5 and 20, Farrell and Barrett are applied as in claims 2 and 17. Farrell and Barrett fail to disclose the use of XML to describe agents. However, Libert uses XML to describe agents. See Libert, column 6, lines 58-61. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farrell and Barrett with Libert for the purpose of allowing the agent information to be used by heterogeneous peers during a discovery process. See Libert, column 3, line 63 – column 4, line 32. Farrell gives motivation by stating that disparate network devices can be used in the

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discovery process. If devices are not operating under the same set of protocols (e.g. disparate), then unless a common method such as XML is used for communication, one of ordinary skill in the art would know that the devices would not be able to communicate. See Farrell, column 2, lines 30-34. By this rationale claims 5 and 20 are rejected.

16. Claims 6-8 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell in view of Fletcher et al. (WO 98/26541).

17. In regard to claims 6 and 21, Farrell is applied as in claims 1 and 16. Farrell fails to disclose eliminating duplicate data entries from different agents by use of a priority value. However, Fletcher discloses assigning different priorities to different agents and using this priority to eliminate duplicate data reports. See Fletcher, page 21, lines 29-31. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farrell and Fletcher for the purpose of reducing unnecessary network traffic overhead and eliminating duplicate information. See Fletcher, page 21, lines 10-13. One of ordinary skill in the art at the time of the invention would know that reducing network traffic would increase the speed and collisions within the entire network, while eliminating duplicate data entries would increase processor efficiency. By this rationale claims 6 and 21 are rejected.

18. In regard to claims 7 and 22, Farrell and Fletcher are applied as in claims 6 and 21. Farrell further discloses *receiving discovery data collected from two or more network device[s] by said two or more discover agents*. See Farrell, column 2, lines 25-39; column 3, lines 47-49. By this rationale claims 7 and 22 are rejected.

19. In regard to claims 8 and 23, Farrell is applied as in claims 6 and 21. Farrell further discloses the use of *two or more aggregator agents*. See Farrell, column 18, line 40 – column 19, line 11. By this rationale claims 8 and 23 are rejected.

20. Claims 9, 24 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell in view of Libert.

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21. In regard to claims 9, 24 and 30, Farrell is applied as in claims 1, 16 and 28. Farrell fails to disclose the use of XML to describe agents. However, Libert uses XML to describe agents. See Libert, column 6, lines 58-61. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farrell with Libert for the purpose of allowing the agent information to be used by heterogeneous peers during a discovery process. See Libert, column 3, line 63 – column 4, line 32. Farrell gives motivation by stating that disparate network devices can be used in the discovery process. If devices are not operating under the same set of protocols (e.g. disparate), then unless a common method such as XML is used for communication, one of ordinary skill in the art would know that the devices would not be able to communicate. See Farrell, column 2, lines 30-34. By this rationale claims 9, 24 and 30 are rejected.

22. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell in view of Barrett and in further view of Libert. In regard to claim 15, Farrell and Barrett are applied as in claim 14. Farrell and Barrett fail to disclose the use of XML to describe agents. However, Libert uses XML to describe agents. See Libert, column 6, lines 58-61. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farrell and Barrett with Libert for the purpose of allowing the agent information to be used by heterogeneous peers during a discovery process. See Libert, column 3, line 63 – column 4, line 32. Farrell gives motivation by stating that disparate network devices can be used in the discovery process. If devices are not operating under the same set of protocols (e.g. disparate), then unless a common method such as XML is used for communication, one of ordinary skill in the art would know that the devices would not be able to communicate. See Farrell, column 2, lines 30-34. By this rationale claim 15 is rejected.

Double Patenting

23. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

24. Claims 1 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 14, 17, 21, 22, 24 and 26 of copending Application No. 09/891,225. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the exemplary application are broader than the claims on the instant application. For example, claim 1 of the exemplary application teaches all aspects of claim 1 in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

25. Applicant's arguments filed 6/21/2005 have been fully considered but they are not persuasive.

26. Applicant has chosen not to traverse the provisional double patenting rejection; therefore Applicant has implicitly agreed with the Examiner's double patenting rejection.

27. Applicant has overcome the 101 rejections to claims 1-15 and the Examiner has withdrawn the rejections under 35 U.S.C. 101 accordingly. The Examiner maintains the rejections to claims 16-30 under 35 U.S.C. 101 as described previously in this Office Action. With regard to claims 16-30, Applicant's arguments are not persuasive.

28. Applicant has chosen to argue the Farrell reference and the 102(e) rejection. Applicant states that since Farrell does not disclose duplicate entries, Farrell does not disclose removing all but one of the duplicate data entries from a discovery document. The Examiner disagrees. Farrell teaches each and every claim limitation of the argued claims.

29. Farrell teaches *receiving discovery data collected from a network device by two or more discovery agents*. Farrell, column 3, lines 47-51.

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30. Farrell teaches *aggregating said discovery data*. Farrell, column 3, lines 52-58. Farrell, column 4, lines 28-31, "individual data collectors can aggregate accounting records from individual data sources."

31. Farrell teaches *coalescing the discovery data in a software file comprising a discovery document, said discovery data including two or more duplicate data entries; and removing all but one of the duplicate data entries from the discovery document*. Farrell, column 4, lines 16-30. "The aggregation processor produces Summary NARs i.e. enhanced and unique network accounting records." Farrell has produced aggregated, unique accounting records from network accounting records produced by various data collectors. Because the records have been aggregated a second time, and because this second aggregation produces unique accounting records, Farrell teaches *coalescing the discovery data in a software file comprising a discovery document, said discovery data including two or more duplicate data entries; and removing all but one of the duplicate data entries from the discovery document*.

32. Applicant has chosen not to argue the 35 U.S.C. 103(a) rejections beyond the arguments presented for the Farrell reference which the Examiner has already addressed.

Conclusion

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571-272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RUPAL DHANRA
SUPERVISORY PATENT EXAMINER